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# **Final Report**

## **Governor's Advisory Council on D.W.I.**

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**May 1987**

# **State of Missouri**

# **Final Report**

**of the**

## **Governor's Advisory**

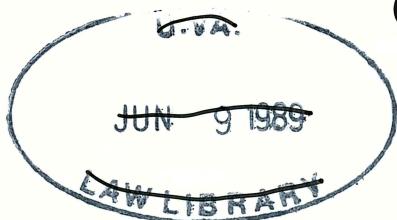
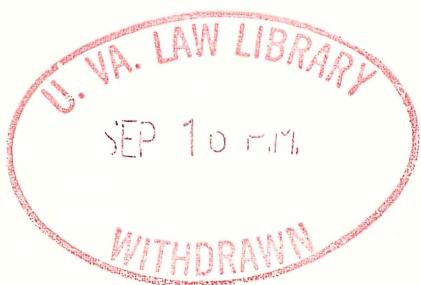
## **Council on D.W.I.**

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Submitted to  
Governor John Ashcroft  
May 1987  
by  
Donald J. Loehr  
Chairman



**Printed by the Missouri Division of Highway Safety**

# **Missouri Governor's Advisory Council on D.W.I.**

## **Originally Appointed Council Members**

Donald J. "Red" Loehr, Chairman  
Chief, Ballwin Police Department  
Ballwin

Honorable Dennis Smith  
State Senator  
Springfield

Honorable Harry Wiggins  
State Senator  
Kansas City

Honorable Jean Mathews  
State Representative  
Florissant

Honorable Al Nilges  
State Representative  
Bourbon

Honorable William Webster  
Attorney General  
Jefferson City

Troy Majors  
Chief, Springfield Police  
Springfield

Col. Howard Hoffman  
Superintendent, MO State Highway Patrol  
Jefferson City

Robert D. Aulgur  
Legal Counsel, Department of Revenue  
Jefferson City

Richard C. Rice  
Director, Department of Public Safety  
Jefferson City

Nathan B. "Nate" Walker  
Director, Division of Highway Safety  
Jefferson City

Dale Findlay  
Executive Director, MO Safety Council  
Jefferson City

Tom Thomas  
Sheriff, Platte County  
Platte City

Sue Johnson  
Past Coordinator, Community  
Alcohol Safety Effort  
Springfield

Florence Horne  
Past President, Heartland M.A.D.D.  
Kansas City

Marge Charleville  
President, R.I.D.-Missouri  
St. Louis

Dr. David Ohlms  
Mid-County Physicians  
St. Louis

Larry D. Harman  
Former Prosecuting Attorney  
Clay County  
Liberty

Charles Smarr  
Supervisor, Liquor Control  
Jefferson City

Mary Lueckenotte Strate  
MO Beer Wholesalers Association  
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Dr. Robert Taylor  
MO Department of Elementary and  
Secondary Education  
Jefferson City

Ron Wilson  
Past Director, MO Division  
of Alcohol and Drug Abuse  
Jefferson City

Dick Moore  
Director, MO Department of  
Corrections and Human Resources  
Jefferson City

Patricia Edwards  
Safety Coordinator  
Kirksville

Joe Moseley  
Prosecuting Attorney, Boone County  
Columbia

Honorable Robert Dowd, Jr.  
Circuit Judge  
St. Louis

Jim Held  
Stone Hill Wineries  
Hermann

John Diehl, Jr.  
Student, Washington University  
St. Louis

Jeff Casady  
Student  
Macon

## **Additional Council Members**

*(as appointed by the Chairman)*

Ted Bruce  
Past Legal Counsel, Attorney General's Office  
Jefferson City

Barbara Babb, R.N.  
Medical Air Rescue Corps  
St. Louis

Cranston Mitchell  
Chairman, Board of Probation and Parole  
Jefferson City

Everett McBride  
President, Heartland M.A.D.D.  
Kansas City

Tim Anderson  
Legal Counsel,  
Attorney General's Office  
Jefferson City



**Missouri Governor's Advisory Council on DWI**

Front row, left to right: Nathan B. Walker, Hon. Jean Mathews, Cranston Mitchell, Barbara Babb, Dale Findlay, Richard C. Rice, Mary Strate, Chairman Donald J. Loehr.

Back row, left to right: Charles Smarr, Tim Anderson, Col. Howard Hoffman, Judge Robert Dowd, Jr., Joe Moseley, Robert Augur, Sue Johnson, Tom Thomas.

Not pictured: Hon. Dennis Smith, Hon. Harry Wiggins, Hon. Al Nilges, Hon. William Webster, Troy Majors, Florence Horne, Marge Charleville, Dr. David Ohlms, Larry D. Harman, Dr. Robert Taylor, Ron Wilson, Dick Moore, Patricia Edwards, Jim Held, John Diehl, Jr., Jeff Casady, Ted Bruce, Everett McBride.

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## **Acknowledgements**

The members of the Governor's Advisory Council on DWI wish to thank those who offered many viewpoints at the forums, those who shared their expertise by serving on the various committees and all others who contributed to the success of the Council. We especially want to acknowledge the efforts of staff members from the Missouri Division of Highway Safety, Department of Public Safety, who assisted the Council. Without their dedication and hard work, this Council could not have successfully accomplished its objectives.

The Council would also like to thank the staff of the Statistical Analysis Center, Missouri State Highway Patrol for information provided on the DWI Tracking System and for developing the drinking driver demographic charts and graphs for this report.

For their invaluable assistance in organizing the public forums, the Council wishes to offer special thanks to the following individuals:

Sue Johnson, Community Alcohol Safety Effort (Springfield Forum)  
Terry Milam, Police Traffic Services Advisory Council (Lake Ozark Forum)  
Ron Stewart, Independence Police Department (Independence Forum)  
Marge Charleville, R.I.D.-Missouri (Creve Coeur Forum)

Finally, the Council wishes to recognize and thank the members of the Missouri General Assembly who sponsor and support DWI legislation. Their courage has resulted in legislation beneficial to their constituents and all Missouri citizens.

# **Background**

In December 1985, Governor John Ashcroft formed a statewide Advisory Council on DWI. The Governor charged the Council with developing a program to help reduce drinking and driving in Missouri by evaluating the following components of the DWI system:

- 1) Existing DWI Laws
- 2) Public Awareness
- 3) Education
- 4) Enforcement
- 5) Treatment/Rehabilitation
- 6) Prosecution and Adjudication

Governor Ashcroft named Donald Loehr, Chief of the Ballwin Police Department, as Chairman of his Advisory Council. The appointed members of the Council included representatives from the General Assembly, law enforcement, the judiciary, community alcohol programs, the Safety Council, treatment, the beverage alcohol industry, victims of drunk drivers, students, the Departments of Public Safety, Revenue, Elementary and Secondary Education, Corrections; the Attorney General's Office, and the Division of Alcohol and Drug Abuse.

Between July and September of 1986, four public forums were held at Springfield, Lake Ozark, Independence, and Creve Coeur. A total of 53 witnesses testified on all facets of the DWI problem. The testimony centered on several key areas including: victims' rights; streamlining paperwork for processing offenders; problems with administrative revocation; plea bargaining; mandatory alcohol/drug education; and parental responsibility. Following the forums, the Council met in December to review and assess the testimony in order to develop their recommendations to the Governor.



Donald J. Loehr, Chairman, Missouri Governor's Advisory Council on DWI,  
and Governor John C. Ashcroft.

# **Past Legislation**

The last major legislation relating to DWI was Suspension and Revocation, Administrative Procedure (RSMo 302.505) which was enacted in 1984 (S.B. 608 & 681). While there have been some problems, Department of Revenue statistics have shown that the law has been successful overall. In the Missouri Highway Safety Study (September 1986), 86% of the Missouri drivers indicated they had heard of this law. This speaks well for Missouri's public awareness efforts.

In August 1984, legislation was passed (H.B. 1226) to include DWI to the Crime Victim's Compensation fund. Beginning in 1985, each offender is assessed a fine of \$36.00, an increase of \$10.00 over the previous fine. The court retains \$1.00 of each fine for administrative expenses. As of February 1987, fines totalling \$502,134.58 have been collected to aid victims of DWI crimes.

# **Assessment and Recommendations**

From the transcripts of the public forums, the Council was able to identify several areas of major concern. After careful consideration of the facts available, the Council would like to submit the following list of recommendations for the Governor's review and consideration.

# **Immediate Priority**

## *Require Prompt Legislative Action*

***"The area where I work in north St. Louis County, 20% of the tickets we write are for no driver's license—none period. People don't have them. We are not locking them up. They are still out there driving, you know."***

Sergeant Gary Hemby  
Lake Ozark Public Forum

## **Recommendation 1**

Hardship driving privileges—under the current law, a multiple offender will be denied driving privileges for five years following a second state DWI conviction, and for a minimum of ten years following the third conviction. As the law now stands, the multiple offender is not eligible for hardship privileges during this time. However, if this same multiple offender gets convicted of driving while revoked, or of obtaining a license by misrepresentation during this period, he or she is eligible to obtain a hardship driving privilege for the revocation that is entered on the basis of that conviction. The changes found in RSMo 302.309(5)(a) and (b) will close this loophole.

## **Legislative Action**

Amend existing legislation as follows:

Section 302.309(5) No person is eligible to receive hardship driving privileges whose license has been suspended or revoked for the following reasons:

- (a) Who has been convicted of any felony in the commission of which a motor vehicle was used or who has been convicted for the second time for violating the provisions of section 577.010, RSMo of obtaining an operator's or chauffeur's license by misrepresentation;
- (b) Who has been convicted of driving while license or driving privileges are canceled, suspended or revoked;
- [(b)](c) Who at the time he applies for such hardship driving privilege would not be eligible for a chauffeur's or operator's license because of the provisions of subdivisions (1), (2), (4), (5), (6), (7), [and] (8), (9), (10) or (11) of section 302.060.

***"Actually, I'm at this meeting to show appreciation for Governor Ashcroft for his laws which will deter DWI offenders, to lend support to other victims of intoxicated drivers, and to show that it is a terrible shame that anyone has to be the victim of a drunken driver; but never should more than one person have to be the victim of the same drunk driver."***

Janice Kay Waitman  
Independence Public Forum

## **Recommendation 2**

RSMo 302.060(10) provides that a person who is convicted of two state DWI offenses shall be denied driving privileges for five years. The Missouri Court of Appeals interpreted this language to mean that the two convictions must occur within five years of each other. The Missouri Supreme Court subsequently disagreed with this thinking, but the ultimate question has yet to be resolved by case law. The proposed change in RSMo 302.060(10) will resolve the issue.

## **Legislative Action**

Amend existing legislation as follows:

Section 302.060(10) To any person whose application shows that he was, within five years prior to such application, convicted for the second time, regardless of the interim between the convictions, of violating the laws of this state relating to driving while intoxicated or who has been convicted of the crime of vehicular manslaughter pursuant to section 577.005, RSMo.

*“John Maulden of the National Transportation Safety Board sums up the opinion of most of us here as well as Independence Truman High School and the entire nation, ‘We have to scare the hell out of these drivers. We have to convince them that they are going to get caught and once caught, they are going to receive a penalty that they won’t want.’”*

Brett Gordan  
Independence Public Forum

## **Recommendation 3**

RSMo 577.039 provides that a valid arrest can be made without the offense taking place in the officer's presence, provided there was a probable cause to make the arrest. However, an added provision requires that the arrest be made within one and one-half hours of when the offense occurred.

This creates problems in situations where there is a single vehicle accident with no witnesses except the driver, or in accidents where there are no surviving witnesses except the driver to fix the time of the violation. It also creates a problem where the driver requires medical attention and it is impractical for an officer to effectuate an immediate arrest.

The proposed changes in RSMo 577.039 would resolve the problem without infringing on the constitutional rights of the suspected drunk driver.

## **Legislative Action**

Amend existing legislation as follows:

Section 577.039 An arrest without a warrant by a law enforcement officer, including a uniformed member of the state highway patrol, for a violation of section 577.010 or 577.020 is lawful whenever the arresting officer has reasonable grounds to believe that the person to be arrested has violated the section, whether or not the violation occurred in the presence of the arresting officer [provided, however, that any such arrest without warrant must be made within one and one-half hours after such claimed violation occurred].

**“I think other civilized countries have done much more to protect themselves against drunk drivers, and I think this is just an example of our Western mentality to think that we can’t do anything about people who flaunt the law and kill people.”**

*Dixie Brown Sackett  
Independence Public Forum*

## *Recommendation 4*

Conviction of involuntary manslaughter should be grounds for permanent revocation of driving privileges.

## *Legislative Action*

Amend existing legislation as follows:

Last sentence of RSMo 302.060(10) (Supp. 1984): The director shall not issue any license hereunder:

- (10) To any person whose application shows that he was, within five years prior to such application, convicted for the second time of violating the laws of the state relating to driving while intoxicated.
- (11) To any person who has been convicted of the crime of involuntary manslaughter pursuant to section 565.024(2), RSMo.

## *Recommendation 5*

Automatic one-year license suspension should be given to first-time alcohol-related traffic offenders under 21 years.

## *Legislative Action*

Propose new legislation.

Comparable legislation proposed this session by Senator Roger Wilson (SB 230), Representative Chris Kelly (HB 81), and Representative Claire McCaskill (HB 172).

## *Recommendation 6*

Eliminate or restrict the option of operating a motor vehicle while consuming alcoholic beverages.

## *Legislative Action*

Propose new legislation.

Comparable legislation proposed this session by Representative Chris Kelly (HB 80).

## *Recommendation 7*

Permit the use of municipal DWI convictions for enhancement purposes when sentencing.

# *Legislative Action*

Propose new legislation.

Comparable legislation proposed this session by Representative Sandra Reeves (HB 204).

*“Another problem we have is in the administrative officers hearing process where cases were dismissed. One was dismissed because they couldn’t read the operator’s identification. Now tell me what in the devil’s name that has to do with whether this person is innocent or guilty.”*

*Captain Ron Stewart  
Lake Ozark Public Forum*

## *Recommendation 8*

Removal of language RSMo 577.023 which states community service must be performed in “at least 10 days” to allow judges more flexibility in sentencing.

## *Legislative Action*

Propose new legislation.

Comparable legislation proposed this session by Representative Jean Mathews (HB 321).

## *Recommendation 9*

Amend administrative revocation law to reduce .13 to .10.

## *Recommendation 10*

Eliminate appeal to Trial De Novo.

## *Recommendation 11*

Impose stiffer penalties for those selling or furnishing alcoholic beverages to minors.

## *Recommendation 12*

Increase minimum penalty for first offender DWI from Class B misdemeanor to Class A Misdemeanor.

# **Second Priority**

## *Further Review and Evaluation Needed*

***"...you know, frankly, this is not an issue that can be dealt with solely in the halls of the legislature in Jefferson City or in the courtrooms of the various municipalities and other areas in the state. It has to be dealt with in the living rooms, the dens and the kitchens of our people. That is where the real battle has to be won."***

*Senator Dennis Smith  
Springfield Public Forum*

***"When court was finished, he said, 'My God, 80 percent of the cases you had this morning involved alcohol.' And I said, 'And those were the driving cases, the minor possessions. Well, the other two were assaults and by the time we get them tried, I'm sure we'll find there is alcohol involved there too.'***

*Judge John Moon  
Creve Coeur Public Forum*

## *Recommendation 1*

Creation of standardized DWI arrest forms for law enforcement statewide.

## *Action*

Police Traffic Services (PTS) Subcommittee on Forms is currently working on this issue.

## *Recommendation 2*

A statewide system of support and possible funding to assist communities in developing and implementing comprehensive alcohol safety projects.

## *Recommendation 3*

Vehicle impoundment for persons driving with a revoked license or of repeat DWI offenders.

## *Recommendation 4*

Mandatory evaluation of all first offenders and a rehabilitation program (based on the evaluation) for repeat offenders. All programs actively providing this service to the courts should be certified by the State Department of Health.

## *Recommendation 5*

Establish a “sentencing matrix” for alcohol-related driving offenses to develop more consistency in sentencing.

## *Recommendation 6*

Consider “articulable suspicion” by law enforcement officer as cause for drawing blood in all serious injury and fatal accidents.

# **Third Priority**

## *Repeatedly Appeared as a Concern*

***“What I’m asking for is strict, strict laws that will punish parents and make them responsible. The community itself cannot be responsible. What we have is 300 kids at a party; half of them intoxicated. If we tell them to leave because their neighbors are complaining, we have 150 intoxicated drivers.”***

Sergeant Frank Rogers  
Creve Coeur Public Forum

***“I think the first thing that needs to be done is to have the parents be aware and make them believe that there is a problem, and then maybe the students can be helped.”***

Ginger Howard, Student  
Springfield Public Forum

## **Recommendation 1**

A person arrested for DWI should be prosecuted for DWI and not a lesser charge; no plea bargaining for DWI.

## **Recommendation 2**

Same point assessment against license should be given when a DWI is reduced to a BAC if the offender tests .10 % or higher.

## **Recommendation 3**

Suspended Imposition of Sentence (S.I.S.) should not apply to any alcohol-related traffic offense.

## **Recommendation 4**

Implement comprehensive alcohol countermeasure programs in communities with traffic impact data that demonstrates a need.

## *Recommendation 5*

Earmark alcohol taxes to aid in DWI prevention, intervention, treatment and education.

## *Recommendation 6*

Increase driver license reinstatement fees to produce revenue for DWI countermeasures.

## *Recommendation 7*

Educate and encourage alcohol servers and dispensers regarding the need to be trained in server intervention and liability.

## *Recommendation 8*

Parental Responsibility—make parents more accountable for actions of their minor children (i.e., fines and/or incarceration, mandatory counseling/education).

## *Recommendation 9*

Need for local community network to assist DWI victims.

## *Recommendation 10*

Encourage prosecutors and probation/parole officers to elicit input from DWI victims prior to sentencing.



# **Further Developments in DWI Problem Analysis**

## *Missouri DWI Case Tracking*

Over the past year and a half the Missouri Statistical Analysis Center, working with the Department of Revenue and the Missouri Division of Highway Safety, conducted a Driving While Intoxicated Case Tracking Study in the state of Missouri. A total of 870 DWI arrest cases were selected for this study from 38 law enforcement agencies in 12 counties in the state of Missouri. In this study, these sampled cases were tracked through the Missouri criminal justice and administrative regulatory systems. The data that has been captured can provide a rich source of information which may be used to answer a variety of questions associated with Missouri's public sector response to the drinking driver problem. The survey is expected to be published in the summer of 1987.

The following set of research questions was formulated as addressed in the first level of analysis:

1. What are the demographic and driver history characteristics of persons being arrested for Driving While Intoxicated (DWI) in the State of Missouri?
2. What are the law enforcement practices, techniques, and patterns associated with DWI traffic arrests being made in the state of Missouri?
3. How are DWI arrest cases being disposed of as they are processed through the Missouri criminal justice system and what types of negative sanctions and/or rehabilitative services are being employed to correct deviant driving while intoxicated behavior?
4. How are the .13 Blood Alcohol Content (BAC) administrative actions being processed in relation to DWI arrest cases in the state of Missouri?
5. How are the BAC test refusal administrative actions being processed in relation to DWI arrest cases in the state of Missouri?
6. How are the point assessment administrative actions being processed in relation to DWI related arrest convictions in the state of Missouri?

Once the first level of analysis has been completed and the findings published, additional interpretive analysis will be made using the data captured in this study. The specific research questions that will be addressed, to a large degree, will be based on the concerns and issues raised by Missouri officials as a result of their review of the findings derived from the first level of analysis. In addition, attempts will be made to address the following research questions during the subsequent levels of the analysis:

1. Do the demographic characteristics of persons being arrested for DWI in Missouri correlate with those persons whose drinking involvement was a contributing factor in Missouri's traffic accident activity?
2. How long does it take to process DWI arrest cases through the various levels of the Missouri criminal justice and administrative regulatory systems?
3. Are there major differences in criminal justice case processing flows related to urban/rural regions of the state?
4. Are there major differences in criminal justice case processing flows related to demographic characteristics of the persons being arrested for DWI?



# **Appendix**

## **Subcommittees for Public Forums**

### *Springfield*

Sue Johnson (Chair)  
Troy Majors  
Dennis Smith  
Dale Findlay  
Larry Harman

### *St. Louis*

Jean Mathews (Chair)  
Donald Loehr  
Marge Charleville  
Robert Dowd  
Barbara Babb  
Al Nilges  
Mary Strate  
David Ohlms  
John Diehl

### *Independence*

Robert Aulgur (Chair)  
Tom Thomas  
Everett McBride  
Patricia Edwards  
Nathan Walker  
Jeff Casady  
Harry Wiggins

### *Lake Ozark*

Richard Rice (Chair)  
Joe Moseley  
Howard Hoffman  
Cranston Mitchell  
Robert Taylor  
Charles Smarr  
Jim Held

## **Advisory Council Staff**

Vicky Williams  
Project Director

Richard Echols  
Treatment/Rehabilitation

Dan Needham  
Enforcement/Adjudication

Amy Stewart  
Public Information and Education

Kathy Shikles  
Secretary

Joyce Marshall  
Legislation

Bill Whitfield  
Photography

## **Additional Assistance**

Kim Stephens  
Transcriptionist

# **Witnesses**

## **Springfield Public Forum July 8, 1986**

Thomas Mountjoy ..... Prosecuting Attorney of Greene County  
Honorable David P. Anderson ..... Circuit Judge  
Stan Spadoni ..... Chief, Rolla Police Department  
Raymond Hargrave ..... Lieutenant, Springfield Police  
Paula Tindell ..... Victim Witness Advocate for Greene County Prosecuting Attorney's Office  
Tom Trtan ..... Public Service Director, KOLR-TV  
Len Krzycki ..... Executive Director, Ozarks National Council on Alcoholism  
Jan Strange ..... Counselor, Parkview High School  
Christine Squibb ..... Regional Coordinator for Missouri Institute for Prevention Services  
Ginger Howard ..... Clerk Typist, C.A.S.E. Program  
Dr. Fred Maxwell ..... Director, Weekend Intervention Program  
C. Les Reynolds ..... Executive Director, Safety Council of the Ozarks  
Bob Watson ..... Victim, Compassionate Friends  
Jeanetta Calvert ..... Victim

## **Lake Ozark Public Forum July 23, 1986**

Sgt. Ed Moses ..... Missouri State Highway Patrol  
Robert Cutt ..... Traffic Officer, Hazelwood Police  
Capt. Ron Stewart ..... Independence Police  
Sgt. Gary Hemby ..... Normandy Police  
Sgt. Frank Rogers ..... Ballwin Police  
Sgt. Randy Roddy ..... Cape Girardeau Police  
Jim Moore ..... VSS Security & Administration  
Jerry Wilmering ..... Maryland Heights Police  
Lt. John Prince ..... Chief Deputy, Henry County Sheriff  
Robert Wieland ..... Traffic Safety Officer, Arnold Police

# **Independence Public Forum**

## **September 3, 1986**

Jim Murray .....	Victim, Jasper County M.A.D.D.
Dixie Brown Sackett .....	Victim
Janice Kay Waitman .....	Victim
Charles Allen Canfield .....	Student
Jan Coats .....	Victim, Heartland M.A.D.D.
Thomas Denton Demark .....	Student and Victim
Ben A. Gallup .....	Victim
Brett Gordon .....	Student
Deanna Kessler .....	Victim, Heartland M.A.D.D.
Marge Knox .....	Victim, Heartland M.A.D.D.
Vic Peters .....	Attorney and Past Prosecutor
James Eads .....	Concerned Citizen
Sherry Brewer .....	Victim
Roberta Murphy .....	Victim, Heartland, M.A.D.D.
Peggy Whittle .....	Victim, Heartland M.A.D.D.
Larry Davis .....	Road Patrol, Platte County Sheriff
John Cogswell .....	Concerned Citizen

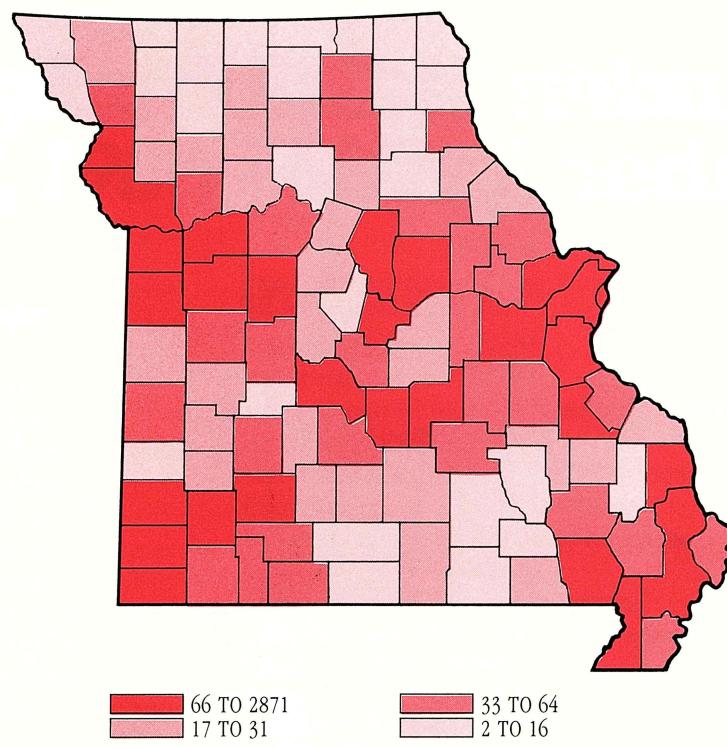
# **Creve Coeur Public Forum**

## **September 18, 1986**

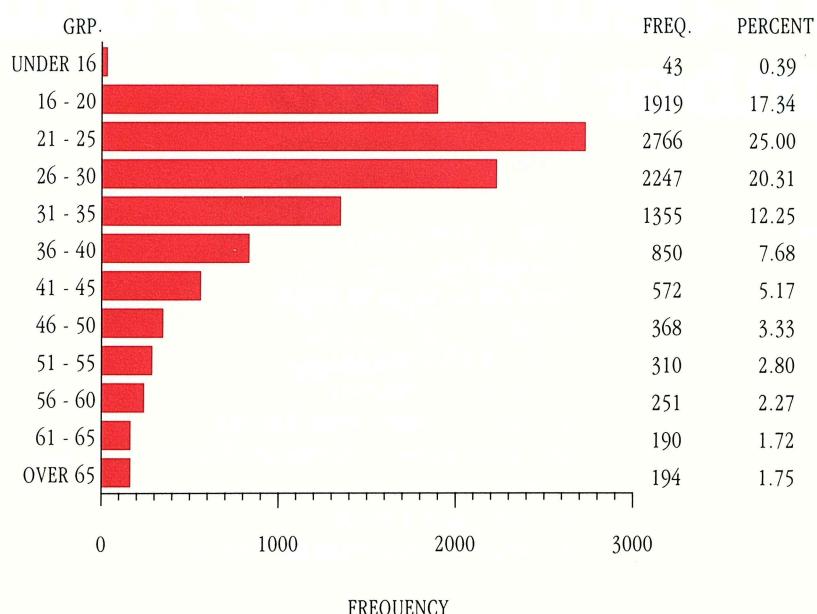
Jim Baker .....	St. Louis County Prosecuting Attorney
Honorable Tony Eberwein .....	Judge, St. Louis County 35th Circuit
Sgt. Frank Rogers .....	Ballwin Police
Honorable John Moon .....	Associate Circuit Judge, Kahoka
Bill Taylor .....	Victim
Carol Lee Mangagna .....	Victim, R.I.D. - Missouri
Thelma Bridgewater .....	Victim, R.I.D. - Missouri
Pamela Nickels .....	Counselor, Webster Groves High School
John O. Clark .....	Missouri Congress of Parents and Teachers Association
Sandra Tyrey .....	Victim
Ed Barni .....	St. Louis Safety Council
Nell Bishop .....	Community Commitment for Survival

# MISSOURI 1986 DRINKING DRIVER-INVOLVED ACCIDENTS

## BY COUNTY



## BY AGE OF DRIVER

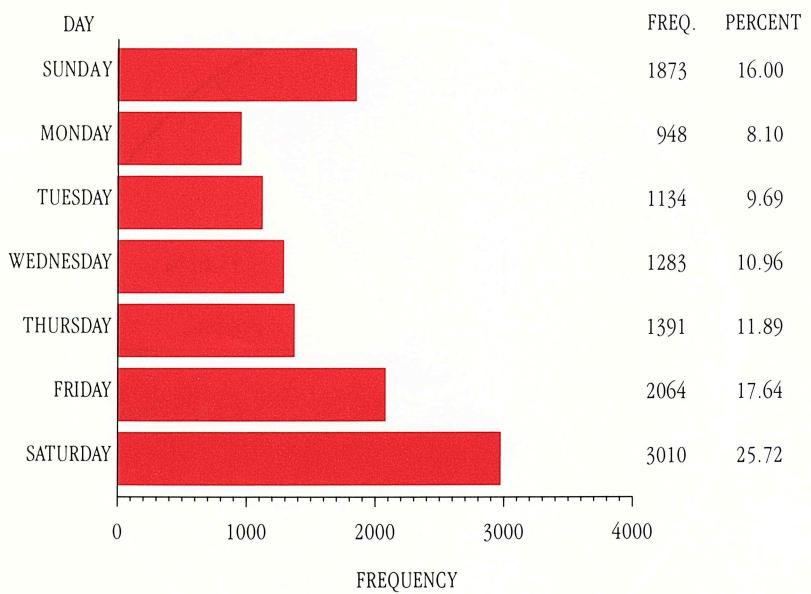


UNKNOWN DATA NOT INCLUDED

## BY MONTH OF YEAR



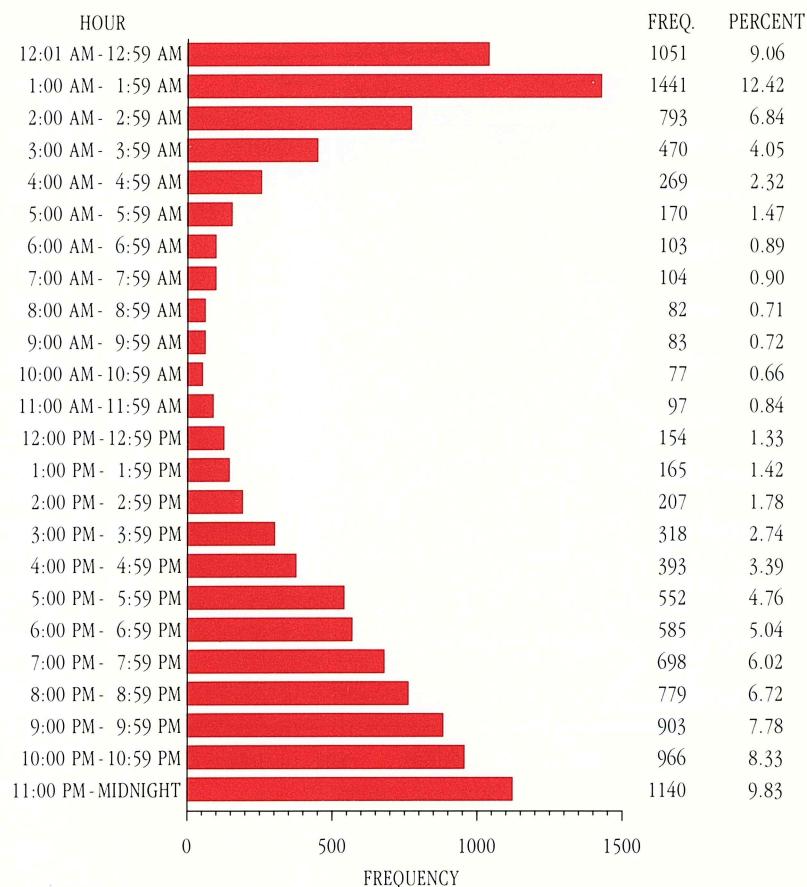
## BY DAY OF WEEK



UNKNOWN DATA NOT INCLUDED

# MISSOURI 1986 DRINKING DRIVER-INVOLVED ACCIDENTS

## BY HOUR OF DAY



## BY SEX OF DRIVER

